

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA

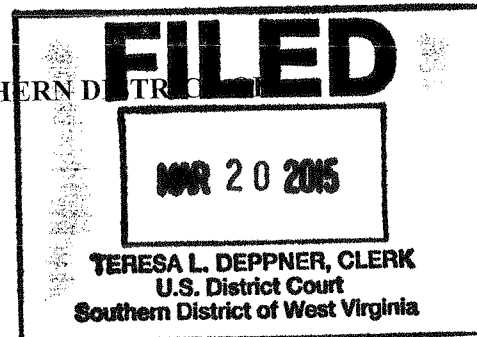
ROBERT LEE BAILEY, JR., and
BESSIE A. BAILEY,

Plaintiffs,

v.

RINEHART TOWER SERVICE, INC.,
A Corporation licensed in Ohio, and
TYSON JAMES CARTER, an
Individual, jointly and separately,

Defendants.



Electronically Filed
CASE NO.: 5:15 - 3388
NOTICE OF REMOVAL
(28 U.S.C. #1332)
(Circuit Court of Wyoming
County, West Virginia,
Civil Action No.: 15-C-28)

Defendants, Rinehart Tower Service, Inc. and Tyson James Carter, by counsel, give notice of removal of this action from the Circuit Court of Wyoming County to the United States District Court for the Southern District of West Virginia, Beckley Division. In support of this notice Defendants state as follows:

1. Plaintiffs commenced this action by filing a Complaint against Defendants in the Circuit Court of Wyoming County, Civil Action No. 15-C-28, seeking recovery of alleged compensatory, general and punitive damages from Defendants' alleged negligence that Plaintiffs claim led to their purported injuries. In particular, Plaintiffs Robert Bailey, Jr. in the Complaint filed alleges he were injured on or about February 12, 2013, when Mr. Bailey was operating his motor vehicle traveling east on WV Route 97 near Maben, Wyoming County, West Virginia. Bessie Bailey, the mother of Robert Bailey, Jr. was the passenger in the motor vehicle operated by Robert Bailey, Jr. *Complaint, Paragraph 9*. Robert Bailey, Jr. contends he received personal injuries, "has incurred past, present and future mental and physical pain and suffering, inconvenience, loss of society, service and companionship, loss of the enjoyment of life and emotion distress, and will continue to do so in the future." *Complaint, Paragraph 13*. Moreover, Plaintiff's mother, Bessie Bailey,

in the Complaint alleges she received personal injuries, “has incurred past, present and future mental and physical pain and suffering, inconvenience, loss of society, service and companionship, loss of the enjoyment of life and emotional distress, and will continue to do so in the future” *Complaint, Paragraph 16*. Process was served on the Defendants Reinhart Tower Service, Inc. and Tyson James Carter via the West Virginia Secretary of State on March 9, 2015. This case became removable to this Court at that time.

2. Plaintiff Robert Lee Bailey, Jr. is allegedly a resident of Wyoming County, West Virginia.
3. Plaintiff Bessie A. Bailey is allegedly a resident of Raleigh County, West Virginia.
4. Defendant, Rinehart Tower Service, Inc., is a Corporation filed with the Ohio Secretary of State, with its business located in Columbus, Franklin County, Ohio.
5. Defendant Tyson James Carter is a resident of Ohio.
6. Both Defendants join and consent to the removal of this action.
7. Consequently, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

Any civil action brought in state court may be removed if the district court has original jurisdiction over the action. 28 U.S.C. § 1441(a). District courts have original jurisdiction of all civil actions “where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states”. 28 U.S.C. § 1332(a)(1); There exists complete diversity of citizenship between Plaintiffs and Defendants. Moreover, this Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. § 1332 and this civil action is one which may be removed to this Court by the Defendants pursuant to the provisions of 28 U.S.C. § 1441 and § 1446 in that it is a civil action wherein the amount in controversy exceeds the sum or value of \$75,000, exclusive of costs and interest, and is between citizens of different states. Under West Virginia law, Plaintiffs’ recovery is theoretically unlimited and only a binding stipulation that they would not seek nor accept more than \$75,000.00 could limit recovery. *See Hicks v. Herbert*, 122 F.Supp2d 699 (S.D.W.Va. 2000).

Therefore, without conceding that Plaintiffs are entitled to any damages, which is expressly denied by Defendants, it is facially apparent by a preponderance of the evidence that the amount in controversy exceeds \$75,000. If the Court for any reason is inclined to disagree, Defendants respectfully request the opportunity to conduct jurisdictional discovery to confirm the amount in controversy.

8. This Notice of Removal is filed pursuant to 28 U.S.C. § 1446. Attached as Exhibit A is a copy of the Complaint.

WHEREFORE, Defendants jointly request this Court proceed with the handling of this case as if it had been originally filed in this Court, and that further proceedings in Civil Action No. 15-C-28 in the Circuit Court of Wyoming County, are stayed.

**RINEHART TOWER SERVICE, INC.,
and TYSON JAMES CARTER
BY COUNSEL**

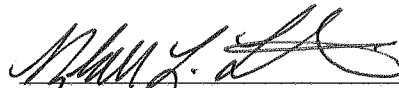


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CERTIFICATE OF SERVICE

Counsel certifies that a copy of the NOTICE OF REMOVAL was served upon the following counsel of record by mail on March 19, 2015:

Anthony J. Sparacino, Jr., Esquire
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Attorney for Plaintiffs



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